REMARKS

The Office Action mailed February 27, 2007 has been reviewed and carefully considered. The Examiner's reconsideration is respectfully requested in view of the above amendments and the following remarks.

Claims 1-4, 7-13 and 16-19 are pending in the present application. Claims 7 and 16 have been amended to correct typographical errors. Claims 5-6 and 14-15 have been cancelled without prejudice.

CLAIM OBJECTIONS

Claims 7 and 16 were objected to due to informalities, namely due to depending on cancelled claims. Applicant has amended claims 7 and 16 to depend from claims 1 and 11, respectively. Accordingly, withdrawal of the objections is respectfully requested.

§102 REJECTIONS

By the Office Action, claims 1-4, 7-13 and 16-19 were rejected under 35 U.S.C. §102.(b) as being unpatentable over U.S. Patent No. 5,745,696 to Mendelson et al. (hereinafter Mendelson).

Applicant respectfully traverses the rejection.

Mendelson teaches a video-on-demand system and method for conditioning program data for transport. Note that Mendelson's primary focus however, involves ensuring that jitter (localized time distortion) and wander (gross time-wise displacement of a program) are minimized while maximizing use of system and network resources. Namely, real-time programs (e.g., games, movies, sporting events, etc.) are encoded as

5

transport stream packets (some of which include timing signals indicating the real-time of the program) which are formatted into transport cells for transport over an ATM network. The transport rate is chosen to deliver the transport stream to a destination faster than a real time of the program; during transport of the transport stream, it is determined if the transport stream is being transported ahead of the real time of the program. If so, idle cells are injected into the transport stream to have the program arrive at the destination in the real time of the program.

Mendelson fails to disclose or suggest, however, at least controlling a data rate of the data stream between the server and a buffer to ensure maintenance of a steady data stream from the customer premise unit to the customer during loss of a physical layer between the server and the customer premise unit, essentially as claimed in claims 1 and 11. Mendelson further fails to teach at least a network control system providing control for the data rate of the data stream, or a signaling mechanism to alert at least one component that the physical layer is lost, essentially as claimed in claims 1 and 11.

Applicant has reviewed Mendelson in detail, and in particular, notes that the Examiner's reference to Mendelson, e.g., in Col. 1, line 55 to Col. 2, line 46, simply generally mentions the desirability of delivering a transport stream at a constant rate, that is, at a rate which is relatively constant with respect to the program's real time. Mendelson's approach to address this issue is to provide a transport controller that, while transporting portions of a transport stream which consume less than the available transport bandwidth, injects idle cells into the transport stream to ensure that constant bit rate transport is maintained. *See* Col. 6, lines 19-22.

6

However, Mendelson's technique of *inserting* idle or 'null' cells to ensure constant bit rate transport bears no relation to controlling a *data rate* of a data stream, as presently claimed. Indeed, it is readily apparent that Mendelson is completely silent with respect to maintaining a steady data stream during *a loss of a physical layer*. In fact, while the present invention teaches wherein the data rate (e.g., decoding rate) is decreased or increased depending on the loss/re-establishment of a physical layer (see specification, page 9, lines 12-30), Mendelson wholly teaches away from this concept, instead emphasizing maintenance of a constant bit rate transport, and in one example reciting: "...it is required that the negotiated transport rate 630 can handle a peak burst of five cell PDUs without slowing down the delivery of the program at the encoding rate." *See* Col. 6, lines 57-67.

There is clearly no teaching or suggestion in Mendelson of any approach to deal with a loss of a physical layer, much less controlling a data rate of a data stream between the server and the buffer to ensure maintenance of a steady data stream from the customer premise unit to the customer during a loss of a physical layer between the server and the customer premise unit, or a signaling mechanism to alert at least one component that the physical layer is lost, essentially as claimed in claims 1 and 11.

At least in light of the above arguments, it is respectfully asserted that claims 1 and 11 are allowable over Mendelson. Claims 2-4, 7-10 and 12-13, 16-19 depend either directly or indirectly on claims 1 and 11, respectively. As such, the Applicant respectfully submits that the dependent claims are patentable and nonobvious for at least the reasons given above for claims 1 and 11.

Accordingly, the Applicants respectfully request withdrawal of all the rejections under 35 U.S.C. §102(b), and allowance of pending claims 1-4, 7-13 and 16-19 on the merits.

In view of the foregoing amendments and remarks, it is respectfully submitted that all the claims now pending in the application are in condition for allowance.
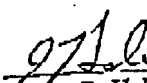
8

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that claims 1-4, 7-13 and 16-19 are patentable and nonobvious over the cited references. Consequently, the Applicants respectfully request reconsideration and withdrawal of the rejections and allowance of the application. Such early and favorable action is earnestly solicited.

No fees are believed to be due at this time. The office is hereby authorized to charge any additional fees which may be required in connection with this amendment and to credit any overpayment to our Deposit Account No.07 0832.

Respectfully submitted,

Dated: 4/27/07

By: _____
Jeffrey D. Hale
Registration No. 40,012

CORRESPONDENCE ADDRESS:

THOMSON LICENSING INC.
2 INDEPENDENCE WAY
P.O. BOX 5312
PRINCETON, NJ 08540

9